

# **CONFIDENTIAL**

**Investigative Report for**

**SNOHOMISH COUNTY  
PUBLIC UTILITY DISTRICT**

**Jim Little Complaint**

**May 9, 2016**

**Prepared by:**

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**I. Introduction**

Snohomish County Public Utility District (herein “Snohomish PUD” or “the Utility”) retained the undersigned and Garvey Schubert Barer to conduct an investigation into specific claims of inappropriate conduct, discriminatory treatment and retaliation allegedly engaged in by certain Snohomish County PUD Commissioners against Jim Little, former Employee Resources Director for the Utility, and Michael Owens, his husband and a current manager at the Utility. Mr. Little retired from his position effective June 30, 2015, and in his exit interview made the aforementioned allegations and linked his retirement to the treatment he believes he received from the individuals targeted in this investigation.

The allegations made relate to conduct alleged to have occurred over a number of months prior to Little’s retirement, and allegedly centered on Little’s and Owens’ sexual orientation. Although not specifically related to the instant allegations, Little believes that the current charges should be viewed in context with past sexual orientation discrimination he claims to have endured during the earlier part of his career with the Utility<sup>1</sup>. As explained in the note below, I was not asked to investigate these old claims, and I did not do so. I reached no factual conclusions related to those

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<sup>1</sup> The conduct associated with these earlier claims is said to have been most significant between 1998 and 2004, and was engaged in by individuals no longer employed at the Utility. Little contends that the early sexual orientation discrimination he experienced ended only after Steve Klein became the Executive Director in April of 2006. Little has no evidence that the targets of the instant investigation were complicit in the discriminatory conduct he believes he was forced to endure during that earlier time frame. I was not asked to investigate or make findings relative to these historical allegations. Due to the passage of time and the absence of relevant witnesses, it would have been difficult, if not impossible to do so. However, I have reviewed, for informational and contextual purposes only, the allegations made by Little regarding this earlier period of his employment as well as the contemporaneous documents he prepared in support of his allegations.

matters and other than as contextual background relative to Little's own perceptions, I have not considered or relied on any of those allegations in support of my conclusions about current claims of inappropriate conduct.

The Commissioners implicated in this complaint adamantly deny that they engaged in any inappropriate, discriminatory or retaliatory conduct. Each contends that operational concerns that they may have raised were based on their rights, duties and obligations as Commissioners and were done in the best interest of the Utility. Each denies considering either Mr. Little's or Mr. Owens' sexual orientation in relation to the performance of their official duties or in any way at all. They deny any allegations of misuse or targeting of PUD Employee Resources. Each denies any violation of the Washington State Open Public Meetings Act, and finally, they deny any conflict of interest with respect to their treatment of whistleblower complaints from individuals outside the agency.

In many investigations, statements are made by witnesses that are unrelated to the issues that I have been retained to investigate. When that occurs I only identify and report on those issues which, if found to be true, I conclude would be either a violation of Snohomish PUD Policy or conceivably a violation of law<sup>2</sup>. I have also not attempted to examine or evaluate the structure, management, general operation or organization of Snohomish PUD; or for that matter, the general deportment of persons working for the PUD, as such an examination was not within the purview of this investigation. Nor have I sought to re-examine or comment on specific whistleblower complaints that were otherwise investigated by the PUD, but which might be tangentially related to the claims herein. The substance of those complaints were also not within the purview of this investigation.

I did review written materials relevant to the current issues. In addition I reviewed policies, documents and other pertinent information related to the allegations made. Finally, I asked for and (when it was available) I received other background information which I believed to be necessary in order to put the allegations and defenses to those allegations into perspective.

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<sup>2</sup> No such issues were apparent or reported herein.

## **II. Investigation Procedures**

This investigation was conducted using standard investigative procedures as supplemented by requirements from Snohomish PUD. Specifically, each person interviewed was briefed on the privileged nature of the investigation and the prohibition of retaliation. Each was advised that I could not guarantee the absolute confidentiality of the content of the statements that they provided to me. As is my standard practice, formal statements were not taken. In all cases I recorded by hand notes of each interview and frequently reviewed these notes contemporaneously with witnesses interviewed to confirm accuracy.

Mr. Little, the complainant in this matter, was initially interviewed to obtain information regarding his various allegations. He communicated with me on other occasions to provide supplemental information. At my request, he provided to me various documents and materials related to his statements. He also provided information about other witnesses having pertinent information about the allegations raised<sup>3</sup>.

### **A. Witnesses Interviewed**

1. Jim Little – Complainant (former Employee Resources Director)
2. Michael Owens – Spouse of Complainant (former Executive Liaison; current Sr. Manager of Customer Analytics & Planning)
3. Craig Collar – CEO/General Manager Snohomish PUD
4. Jim West – AGM Customer and Energy Services
5. Anne Spangler – General Counsel Snohomish PUD
6. Toni Olson – PUD Commissioner
7. Steve Klein – Former CEO/General Manager Snohomish PUD
8. Melissa Collins – Clerk of Snohomish PUD Board
9. Kathleen Vaughn – PUD Commissioner
10. Branda Andrade – PUD Counsel for Employment/Labor Relations
11. Kristi Treckeme – PUD Employee Resources Director

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<sup>3</sup> In this regard there has been some limited delay in issuing this report that resulted from Mr. Little providing me with documents he obtained in late January/February of 2016 as a result of responses to his various public records requests to Snohomish PUD. These documents necessitated additional interviews with Utility personnel, and consequently resulted in some delay in delivery of this report.

12. Jessica Matlock – PUD Government Relations Director
13. David Aldrich – PUD Commissioner
14. Kristina Morris – Principal/The Washington Firm
15. Patricia Buescher – Former Clerk of Snohomish PUD Board
16. Nancy Holbrook – Commissioner Vaughn’s Policy Analyst
17. Kristin Hall – Assistant General Counsel Snohomish PUD
18. Shawn Aronow – PUD Counsel for Generation Group

B. Documents and Materials Reviewed

In addition to formal interviews, I reviewed in excess of 1000 pages of documents, notes, charts, written materials, evaluations, policies, employee files and other material relevant to this case, including but not limited to the following:

1. Snohomish PUD Non-Union Employee Evaluation Policy
2. Snohomish PUD Directive 12 – Anti – Discrimination Policy
3. Snohomish PUD Directive 10 – Equal Employment Opportunity Policy
4. Documents from L. Prouse re: General Manager Recruitment
5. Exit Interview & Complaint Form re: Jim Little
6. N. Holbrook Personnel File
7. N. Holbrook Evaluations
8. Email, Notes, etc. re: N. Holbrook Work Product
9. Diary – Jim Little re: Various Matters
10. Snohomish PUD Directive 23 – Performance Management
11. Snohomish PUD Salary Administration Guidelines
12. Snohomish PUD General Manager Recruitment File
13. Employee Whistleblower Complaint, March 10, 2015
14. Various documents, email and materials responsive to Little’s PRR

**III. Summary of Complaint Allegations**

Jim Little alleges that in recent months and particularly during the last year or more of his employment with Snohomish County PUD, he was subject to discriminatory treatment by

Commissioners Vaughn and Olson. He contends that this alleged discriminatory conduct occurred because of his sexual orientation. He states that as a result of this conduct he was excluded from activities within his purview as Employee Resources Director. Moreover, he alleges that by engaging in the aforementioned discriminatory conduct, the two named Commissioners effectively prevented him from performing his job. He believes this was all done because he is gay.

Additionally, Little contends that his husband, Michael Owens, was discriminated against because he was gay and black, and also because he had a disabling condition that required his absence from work for a significant period of time. Owens has not made such a claim.

Little contends that Commissioners Vaughn and Olson violated the Washington State Open Public Meetings Act (RCW 42.30, et seq.), by meeting outside of scheduled Commissioners meetings to plan, discuss and make decisions on official Utility business. And, Little contends that Vaughn employs Nancy Holbrook in violation of the PUD's/State's ethics code, because Holbrook performs no meaningful work for the PUD and is not required to report into work at the PUD. Nonetheless, Holbrook enjoys a significant salary and regular benefits afforded all other PUD employees.

I have outlined the specific allegations raised by Mr. Little below:

- Little contends that Commissioner Vaughn discriminated against him in her failure to allow him to investigate an alleged Whistleblower complaint filed by an employee at the Utility. Little claims that the reason for excluding him from the investigation was pretext, and that in fact, it was a conflict of interest for Commissioner Vaughn to be involved in the investigation to any degree.
- Little contends that Commissioners Vaughn and Olson excluded him from performing his job as Employee Resources Director during the recent search for a new CEO/General Manager. He contends that he was prevented from providing assistance and support consistent with his duties because his sexual orientation was viewed as a liability to the process. This conduct occurred notwithstanding the recommendation by the outgoing CEO/General Manager that he be allowed to participate in the process.

- Little contends that his husband Michael Owens was subject to discriminatory treatment when he was summarily excluded from an executive session by Commissioners Vaughn and Olson. Little contends that this conduct occurred because of Owens' sexual orientation, race and the fact that he had a disabling medical condition.
- Little contends that his husband's position of Executive Liaison was eliminated as the culmination of a scheme by Vaughn and Olson to remove Owens from the position, because of Owens' sexual orientation, race and the fact that he had a disabling medical condition.
- Little contends that Vaughn and Olson violated the State of Washington's Open Public Meetings Act by meeting outside of regular Commissioner meetings, in person and by phone, to consider, discuss and make decisions related to PUD business.
- Little contends that Commissioner Vaughn's employment of Nancy Holbrook is a violation of PUD/State ethics code, as Holbrook performs little or no work, never comes into the office, produces no work product, and otherwise is not acting consistent with her job duties.

#### **IV. Summary of Findings and Conclusions**

##### **Investigation of Whistleblower Complaint**

The underlying facts of the allegation are without dispute. Little was prevented from being involved in the investigation and resolution of the whistleblower complaint, even though PUD policy provides that such complaints are handled by the Employee Resources Director.

Contrary to Little's assertion, I do not find evidence of sexual orientation discrimination with respect to this allegation. I do find Vaughn's explanation for excluding Little perplexing in light of her own participation in the investigation and the potential for an "appearance of conflict" resulting from her prior relationship with the complainant's family. However, while I have concerns about Vaughn's limited participation in the investigation, I have not found evidence



sufficient to support Little's claim of discrimination and his allegation of pretext. Whether Vaughn's motivation was solely out of regard for appearances or as some opined, based on a lack of trust, Vaughn's articulated rationale was plausible in my opinion. Moreover, the witnesses to her conduct and deliberations regarding the decision offer no evidence supporting a conclusion that sexual orientation discrimination played a part in the process.

#### Discrimination Concerning Exclusion from General Manager Search

With respect to this allegation, Little contends he was essentially excluded from the General Manager Search process as a result of directives from Commissioners Vaughn and Olson. The Commissioners on their part contend that Little was not excluded. On the contrary, they contend that his role was just strictly limited to administrative functions associated with those expected out of Employee Resources (i.e., benefits, salary calculations and the like). The evidence suggests and I conclude that the intent of Vaughn and Olson was to exclude Little from as much of this process as was feasibly possible. Moreover, the circumstantial evidence suggests on a more probable than not basis that at least part of the reason Vaughn felt that Little should be excluded from the process was based on how she perceived his sexual orientation and how his appearance as a gay man would be interpreted by potential candidates for the position. The circumstantial evidence does not support this conclusion with respect to Commissioner Olson.

Additionally, there is evidence to support the conclusion that Vaughn and Olson met outside of Commission meetings to discuss and make decisions regarding the General Manager search and Little's participation in the search process, in violation of Washington's Open Public Meetings Act.

#### Discriminatory Treatment of Michael Owens re: Executive Session

There is little dispute that Owens was more or less summarily dismissed from the Executive Session in question, without warning and without immediate explanation. It is also clear that as a matter of practice, consistent with his job duties as Executive Liaison, Owens would normally be included in such a session. Notwithstanding these facts, the evidence suggests and I find on a more probable than not basis, that the act of excluding Owens from this session had nothing to do with his race, sexual orientation or disability status. This action resulted from a miscommunication

between the legal department, the Acting General Manager and the Commissioners. I therefore find no merit to this allegation.

Discriminatory Treatment of Michael Owens re: Elimination of Position

The evidence suggests and I find that there were tensions between Commissioner Vaughn, Olson and Owens concerning his position as Executive Liaison and how he interacted with the Board and the Clerk of the Board. Discussions took place between Commissioners and General Manager Klein regarding difficulties that were developing between Owens in his role as Executive Liaison and the Clerk's office. The issues created a rift of sorts between Owens, the Clerk's office and the Board. They affected the perception that Commissioners Vaughn and Olson had of Owens, and in their view negatively impacted the effective functioning of the Clerk's office, and by extension the Board. These difficulties were also confirmed by the Clerk and the Deputy Clerk. Moreover, Klein confirmed that he attempted to mediate the issues and concerns between Olson and Owens at various times.

There is also evidence suggesting that Vaughn and Olson talked about and may have considered affirmative action to facilitate Owens' removal as Executive Liaison. In fact, Vaughn's request for specific information about the Executive Liaison position immediately prior to Craig Collar assuming the CEO/General Manager role is of concern in this analysis. However, on balance, and notwithstanding the immediately preceding facts, I do not find sufficient evidence to conclude on a more probable than not basis that Vaughn and Olson affirmatively suggested and/or directed Craig Collar to eliminate the Executive Liaison position. Nor do I find sufficient evidence to conclude that race, sexual orientation or disability status was involved in Vaughn and Olson believing that Owens was a problem in the position.

The evidence suggests on a more probable than not basis that the issues related to this allegation are more an example of traditional work place and business dynamics of many sophisticated operations. There simply is insufficient evidence for me to conclude that race, sexual orientation or disability played a role in those issues.

### Violations of Open Public Meetings Act

Although as noted, I find that Commissioners Vaughn and Olson met to discuss issues related to the recruitment process for the PUD's new General Manager and Little's participation in that process, I did not find that the additional allegations made by Little with respect to Open Public Meetings violations were meritorious. The underlying nature of meetings and phone calls specifically described by Little as further evidence of violations are not supported by sufficient direct evidence to sustain the allegations.

### Violations of Ethical Standards Re: Employment of Policy Analyst

The evidence suggests and I find that the working relationship that exists between Nancy Holbrook and Commissioner Vaughn, while unique, is not prohibited by the PUD. Holbrook is under contract to perform as an analyst for Commissioner Vaughn. The Commissioners are aware of the relationship and, while they might think it strange, they have not voted to terminate the relationship as they could. Certainly, a reasonable person could find that the flexibility, independence and discretion Vaughn provides Holbrook is extraordinary. And, some might question the lack of written work product that has been produced by Holbrook. However, in light of Vaughn's un-contradicted statements that Holbrook is providing just the types of services she needs in her specific work paradigm and processes, I cannot conclude that there is an ongoing violation of ethical standards.

## **V. Allegation Findings and Conclusions**

### **A. Investigation of Whistleblower Complaint.**

#### Specific Allegations and Response

Jim Little alleges that he was prevented from conducting an investigation into a whistleblower complaint by Commissioner Vaughn because of his sexual orientation. Further, he alleges that Commissioner Vaughn's participation in the investigation of the complaint was a conflict of interest.

Little states that in March of 2015 he learned from various individuals at the Utility that a Snohomish PUD employee had filed a complaint against then CEO Steve Klein, PUD General

Counsel Anne Spangler, and others in senior management of the PUD, alleging that these senior PUD officials had engaged in a "steering" and "kickback" scheme with a firm that was doing business and/or planning to bid on a Snohomish PUD contract. Little states that by PUD policy, he is the administrator of the Utilities' whistleblower apparatus. Nonetheless, it was by chance that he learned that a complaint had been filed, as apparently it had not been routed to him as it should have been. In fact, he learned that members of his staff had been working on the complaint at the direction of others, and this information had not been provided to him.

Little states that after talking briefly with Klein and another Assistant General Manager about the activities of his staff with respect to the complaint, and not knowing about or directing those activities, he, Klein and PUD in-house labor and employment attorney Branda Andrade discussed the matter. He states that he learned from these discussions that a whistleblower complaint had been filed by an employee. He also learned that the complainant specifically stated that he did not want the complaint to be processed by Little because the complainant believed that the investigation would be compromised as a result of Michael Owens (Little's husband) working for GM Klein, who was identified as a target in the complaint. Little was told that Owens was not named in the complaint and was not a party to the complaint.

Little learned that the complaint was directed to Commissioner Vaughn. He was also told that Commissioner Vaughn concluded that Little was not to be involved in the investigation. The complainant indicated in the email transmittal that the reason he was asking Vaughn to investigate the complaint was because the complainant's aunt and uncle had done business with Vaughn in the past. Little indicated that Vaughn has had a private real estate business in the community.

Little contends that when Vaughn consulted Spangler about the complaint, Spangler advised that it really was not technically a whistleblower complaint. Nonetheless, Little states that Vaughn undertook to deal with the complaint and gave the complainant whistleblower protection. He further alleges that Vaughn advised management not to involve Little in the investigation even though PUD policy called for the Employee Resources Director to be involved in all such complaints.

Little does not believe there was any legitimate business reason to keep him out of the investigation. He contends that Vaughn kept him out of the investigation because Vaughn dislikes

him and because of his sexual orientation. He believes that Vaughn should have recused herself from any involvement in the investigation in light of her prior personal business dealings with the whistleblower's family. He contends Vaughn's failure to recuse herself was a conflict of interest.

Commissioner Vaughn denies that she excluded Little from the investigation for discriminatory reasons. She also does not believe there was a conflict in her initial and subsequent involvement in the complaint and investigation. Vaughn states that the complainant sent her the email complaint through the PUD's email account. Vaughn states she does not have access to that account. At the time, she and Commissioner Olson were in D.C. along with the Clerk of the Board, who would have had access to the account. In any event, she contends that the deputy Clerk of the Board received the email, talked to the Clerk and was advised by the Clerk to speak with Andrade about the complaint. Vaughn understands that Andrade spoke with Spangler about the complaint.

Vaughn states that Spangler called her at her personal business office and explained that there was a complaint. Spangler emailed the complaint to Vaughn. Vaughn states that the complaint was against the "upper echelon" of the PUD, and that the Complainant came to her because he had family members that knew her and had worked with her. She states that the Complainant noted that the reason he didn't go through Little was that Michael Owens was the Executive Liaison under Steve Klein. She confirms that neither Little nor Owens was named in the complaint.

Vaughn believes that it was appropriate under those circumstances to exclude Little from the investigation. She felt that by doing so she was protecting Little and Owens from the appearance of conflict. On the other hand, she notes that she had never met the Complainant, didn't know him as an employee, and her work had never taken her anywhere near the Complainant's job. Because she had not met and didn't know this employee, and notwithstanding her prior dealings with the employee's family, she did not believe there was a conflict in her own involvement with the complaint.

Vaughn contends that Spangler felt the complaint needed to be treated as a whistleblower complaint. She noted that she asked Spangler to step aside because Spangler was named in the complaint, and she communicated with Andrade to work on the investigation. Vaughn and Andrade worked on the matter until the next Commissioner's meeting, wherein she reported the

receipt of the complaint to the other Commissioners. She believes that the other Commissioners asked her to handle the complaint. Thereafter, she worked with Andrade to hire an outside investigator to investigate the allegations in the complaint.

Finally, she again stated that she felt she was protecting Owens and Little. And, as to her own potential conflict or appearance of conflict, she stated it really never crossed her mind. She reasoned that she didn't see how she had a conflict of interest. Nobody told her that she should step aside. She believes that Little's allegations simply don't have merit.

#### Relevant Witness Observation & Information

Steve Klein confirms that the normal procedure for whistleblower investigations was to go through the Employee Resources Director or the Legal Department. He also confirms that in this case, that process was not followed. He notes that on March 10<sup>th</sup>, a month after he had given his notice of retirement, the Complainant sent an email to Vaughn suggesting wrongdoing and stating that he had contacted Vaughn because of her long-standing relationship with the Complainant's family. He confirmed that the Complainant expressly did not want to go through Little, because of Owens working for Klein.

Klein believes that Little was prevented from participating in the investigation, and that his lack of participation resulted in the delay that occurred in the process. However, with respect to Little's assertion that he was denied the ability to participate because of his sexual orientation, Klein states that he saw no such motivation in Vaughn's actions.

Commissioner Olson states that she did not know that Little was excluded from the investigation. She believes that the standard practice would have been to have Little involved in such investigations. And, since Little was not involved in the complaint, she does not know why he was not involved. She notes that she did not participate in the decision to not involve him, and if the Board made the decision, she was not present when it was made. She notes that the Commissioners did not say that Vaughn couldn't or shouldn't be involved in the investigation.

Anne Spangler states that the whistleblower complaint was a very short one paragraph email that was not very specific other than expressing concerns about the General Manager and the Executive Staff. She noted it was sent to Commissioner Vaughn's email, but was retrieved by the Clerk.

Spangler also confirms that the Complainant stated that he trusted Vaughn to look into the matter because his family had worked with her in her private business in the past. The Complainant also stated that he was not going through the Employee Resources Director because his husband worked for the General Manager.

Spangler confirmed that she called Vaughn and discussed the complaint. Spangler questioned whether it should be viewed as a whistleblower complaint but, nonetheless, felt that the PUD needed to go outside of the organization for an investigation. She states that Vaughn's treatment of the complaint as a whistleblower complaint did not surprise her despite her own thoughts in this regard.

Spangler reported that she sent an email response to the Complainant saying that she (Spangler) would be coordinating the outside investigation. The Complainant responded saying that he objected to Spangler's coordination of the matter because he felt that Spangler was involved. So Spangler assigned the matter to Andrade to coordinate. Spangler believed Vaughn had the perception that because Owens worked with Klein and was married to Little, there was some level of influence that could be asserted. She does not know if Vaughn really believed this to be the case, or whether Vaughn was just worried about it. However, as a result, Little was not involved in the investigation in any way.

Branda Andrade states that Vaughn did not manage the complaint. Andrade managed it consistent with her assignment from Spangler. She confirms that the complaint came in on March 10 to Vaughn's PUD email and that Melissa Collins (Deputy Clerk) retrieved it. She confirms that Collins talked with her about it, and that the complaint had no allegations about either Owens or Little.

Andrade confirms that Spangler contacted the Complainant, who objected to Spangler being involved. Andrade states that she didn't believe there was any reason why Little could not coordinate the investigation. However, she believes that in Vaughn's mind, she might have thought that there was some possible appearance of conflict, so she made the decision to keep Little out of the process. Andrade believes the decision made by Vaughn did not have anything to do with sexual orientation. She does not believe that Vaughn likes Little, generally, and believes

that Vaughn does not trust Little. However, she does not believe that the issue of his sexual orientation ever came into play.

### **Factual Findings and Conclusions**

The underlying facts of this allegation are not in dispute. The investigator was allowed to review the Complaint from the employee Whistleblower. Briefly stated, the Complaint came in on March 10, 2015, complaining of alleged inappropriate conduct by the General Manager and others in the senior management staff of the agency. The complainant noted his faith in Commissioner Vaughn as a result of past business interactions his family had with Vaughn. He also noted his hesitance to allow Little to be involved for fear of the connection between Little, Owens and Klein, one of the principal targets of the Complaint.

Spangler, who was also implicated by the Complainant, decided to assign the case to one of her staff attorneys for coordination of an outside investigation. Andrade coordinated the investigation to conclusion and report. Vaughn appears only to have been involved with the initial intake and investigation logistics. All agree that the investigation was conducted by an experienced outside independent investigator.

I find that once mentioned by the Complainant, Vaughn had articulable concerns regarding the appearance of conflict as a result of Owens working for a significant target of the investigation, and how that might look if Little, his spouse, was involved in directing or coordinating the investigation. Under the circumstances, while I might not have reached Vaughn's conclusion on this issue, I also can't conclude that her perception was so outrageous or off-base as to support a claim of discriminatory pretext.

While I find it quite odd that Vaughn's failure to even consider the impact her prior relationship to the Complainant's family might have on observers assessing the independence of the investigation process, her blind spot in this regard does not support a conclusion that she made the decision to exclude Little for reasons of sexual orientation discrimination. In fact, the credible testimony of Klein, Spangler and Andrade suggests otherwise. The three clearly did not share Vaughn's and the Complainant's concern about Little's connection with the principal targets of the investigation, or Little's integrity in coordinating the investigation process. However, they



honestly believe that sexual orientation discrimination had no part in Vaughn's decision-making process.

Ultimately, the investigation was coordinated by in-house counsel, and an outside investigator was retained to actually conduct the investigation. To that extent, I find little basis to conclude that Vaughn's prefatory involvement amounted to a conflict of interest, even if I were to conclude that it was ill-advised for appearance purposes.

B. Discriminatory Exclusion from General Manager Search

Little contends that Commissioners Vaughn and Olson excluded him from performing his job as Employee Resources Director during the recent search for a new CEO/General Manager. Little states that on February 3, 2015 he and his husband were in Tucson, Arizona, on vacation when he received a call from Steve Klein. Klein called him to let him know that Klein was giving his notice of retirement to the Commissioners after the regularly scheduled Commission meeting. Little states that Klein was giving him prior notice because Klein intended to tell the Commissioners that Little would be available to work on the recruitment process for the next General Manager. Little states that later that day he received another call from Klein; he states that Klein told him that Commissioners Vaughn and Olson had come to him and advised him that they did not want Little involved in the recruitment process at all. Little understood from Klein that this decision by Vaughn and Olson occurred after the end of the Executive Session and not in the public meeting. He asked Klein if that decision was legally made, and acknowledges that Klein did not confirm the legality or illegality of the decision.

Little states that on Wednesday, the 4<sup>th</sup> of February, he got a frantic call from Pat Buescher, the Clerk of the Board. Pat pleaded with him to get involved in the General Manager recruitment because the Commissioners had designated her as the lead on the search and Pat stated she did not know what she was doing. Little told Pat that he would try to assist behind the scene. He also told Pat it was his understanding that the Commissioners did not want him involved, and he suggested that she talk with Vaughn and Olson about it. He states that Buescher called him back and advised him that they had told her they wanted him involved.

Little states that he advised he would subsequently contact the search firm and put together thoughts on how to proceed. He contacted the firm and suggested a specific plan of approach that involved him meeting with the firm and with the Commissioners. He drafted the plan and forwarded the plan to Buescher. Buescher forwarded the draft to the Commissioners.

The very next morning Little states that he received another call from Klein, wherein Klein informed him that in a conversation with Olson, Olson told Klein that Vaughn did not want Little involved in any way, shape or form. Little later talked to Buescher who confirmed to Little that he would not be involved. He also received a call from the recruiter stating that she had been instructed to work exclusively with Vaughn and Buescher.

Little contends that after subsequent conversation, Klein informed him that he would schedule an Executive Session to discuss the recruitment with the Commissioners because it appeared as if decisions were being made outside of regular Commission meetings. An Executive Session was scheduled and Little states that Klein and Andrade were present. After the meeting Andrade came to him and advised that she was extremely disturbed by Vaughn's attitude about him. Andrade told him that Vaughn's negative comments and apparent attitude were extraordinary. Andrade allegedly stated that as Vaughn's comments continued, it upset Commissioner Aldrich so much that he told Vaughn to "keep her prejudices at the door." Little states Andrade advised him that she concluded from the comments made by Vaughn that Vaughn was afraid potential candidates would meet Little in the interview process and be offended by his sexual orientation. Little states that when Vaughn was asked directly why she did not want Little involved, she looked down at the floor and said that Little was too political.

Little states that he also spoke with Klein about the Executive Session. During his discussion with Andrade, Klein returned. Little states that Klein confirmed and corroborated all of the information that Andrade had shared with him. Further, Klein advised that at some point in the process, Commissioner Aldrich realized that Olson and Vaughn had been meeting outside of session and deciding issues about the search without him, including giving instructions to the consultant. Aldrich felt that they were violating the law.

Little states that he was effectively prohibited from having involvement in the recruiting process, although he believed that this was part of his job and had helped on previous General Manager

recruitments. He believes that Vaughn and Olson prevented him from performing his job as a result of Vaughn's homophobic attitude.

Vaughn and Olson each individually deny that they sought to have Little excluded from the recruitment process. They contend that they did want to limit his involvement to support functions associated with wages, benefits and the like. Vaughn stated that the PUD has hired a number of individuals during her tenure and that she believes they have typically had an outside recruiter and outside attorney to work with during negotiations, and Employee Resources help to provide support for the process for wages and benefits. She states that she was aware that Little wanted to be involved with every meeting; she concluded that this was not how the Commission should proceed.

Vaughn advised that in the initial Executive Session after Klein gave his notice of retirement, the Commissioners discussed contacting the recruiter to be involved in the process and develop with the Commissioners the criteria for hiring the new General Manager. She described in detail the various steps the Commission used to interview the candidates. She stated that the Clerk of the Board had always handled the logistical portion of this process and she directed the Clerk to do so in this instance.

Vaughn stated that Klein only mentioned bringing Little into the process as a passing comment. She states that Klein said the Commissioners might want to bring Little in to assist as he was very good in the process. She advised that she told Klein there was a structure in place that the Commissioners wanted to use and there was no need to have Little involved. Vaughn stated that Buescher did not run into any issues doing the recruitment. Vaughn states that after Little left, she got Kristi Treckeme (Little's replacement) and another ER person to walk through benefits prior to the interview and hire process.

Vaughn denies that Little was excluded from the process because of his sexual orientation. She states that the Commissioners have the right to run their CEO/General Manager search any way they wish. Vaughn states that the decision to not have Little involved had nothing to do with his skills or his personality. She initially denied stating that she remarked in Executive Session that Little was too political, noting that she believed Commissioner Olson made that comment. She subsequently corrected herself on this issue and confirmed she actually made the comment.

Vaughn advised the investigator that she thought Little was too opinionated. Finally, she advised that there were no other meetings, non-Commission meeting discussions, decision-making processes outside of the Commissioner meetings, and noted that she and Olson had not violated the Open Public Meetings Act.

Olson states that she was a Commissioner when Steve Klein was hired. She states that even before she was an Assistant General Manager, she was assigned to manage the CEO recruitment duties. She was in the Executive Liaison role at the time, and did so in consultation with Employee Resources. She states that she managed the recruiter's contract. However, she believes this all goes through Employee Resources now. She states that when Klein retired, the Commissioners asked the Clerk of the Board to oversee the process in consultation with Employee Resources. She notes that the Clerk did not have the expertise in all of the areas necessary. She believes that Little was used for that process.

Olson believes there was miscommunication early on about roles and responsibilities. She could not specify who communicated what to whom, but she knows that the Commission concluded that Little would be involved to a lesser extent than what she understood Little wanted to be involved.

She stated that the Commission's expectation was that the Clerk's office would manage and oversee the process and Employee Resources would be involved in the salary determination.

Olson states that to her knowledge, the Commissioners did not prohibit Little from being involved in the process. Nonetheless, she believes that Little might have reached that conclusion as a result of what was being communicated. She believes that to be particularly true with respect to Little not being involved in the interviews with the Commissioners. From her view, because Little was a direct report to the General Manager, she believed he should not be involved with the actual selection of the GM.

Olson does not have a recollection of a particular meeting wherein Klein talked about Little's participation. She does recall discussion about the process and what Little could bring to the process. But, she was not sure whether there was agreement or disagreement between the Commissioners. She does not recall telling Klein at any time that the Commissioners did not want Little involved; however, she recognizes that at some point something would have had to have

been told to Klein, clarifying Little's role as being oversight of the consultant's contract and as a resource expert. She does recall that Klein had a problem with limiting Little's role in this way, but she really does not know what that problem was.

Olson states that the Board was unanimous in the process that was selected for recruitment. She does not recall making any statement about Little being too political to be more involved in the process. She does acknowledge that Little was not integrally involved in the recruitment process. She believes that the recruiter did all the pre-screening and related steps involved with the process. She denies that Little wasn't involved in the process due to optics associated with his sexual orientation or how candidates may have perceived his sexual orientation. She states that she can only speak for herself, but that alleged reasoning never entered her mind. She asserts that she never heard either of the other two Commissioners raise the issue of sexual orientation with respect to this process.

#### Relevant Witness Observation & Information

Commissioner Aldrich states that the Commissioners hired Lanie Prouse, an outside consultant/recruiter, in open session. Prouse met with the Commissioners to develop criterion for the search and then facilitated the published announcement. The Commission received 45 applications. Prouse did the initial cut, paring it down to approximately 10 applicants. Aldrich states that in Executive Session, they cut the list down to internal and external candidates they wished to interview.

Aldrich believes that Vaughn had reservations about Little's involvement in the recruitment process. He cannot explain those reservations. He states that at the time, Vaughn was still Commission president. He does not remember if Olson shared Vaughn's reservation. He recalls Klein being upset that Little wasn't involved. Klein stated that Little was the best Employee Resources person that he had ever worked with. Aldrich did not recall any discussion of why Little didn't get involved. Aldrich states that he felt like he was outnumbered. He stated that Vaughn was very passionate about Little not being involved. He notes that she may have offered a reason, but he does not recall what it was.

Aldrich denies making the statement, "why don't you leave your prejudices (bias) at the door." He does not deny that Vaughn and Olson did not want Little's involvement. He stated that he never has involvement with Employee Resources matters. He believes his colleagues are different. He notes that he has chided both Vaughn and Olson about their involvement in Employee Resources matters. He states that he does not recall any disaffection with Little on the basis of sexual orientation. He states that in his presence neither Vaughn nor Olson expressed a negative attitude toward Little based on sexual orientation.

Steve Klein confirmed that he gave notice to the Commissioners in Executive Session on February 3 that he intended to retire on May 1, 2015. Subsequently, he requested another Executive Session to discuss transition. He states he had devised a list of options for the Commissioners to consider with respect to the recruitment process. On the list, he had noted that Little would work with an Executive Recruiter, update the job description, and continue to work with the recruiter through the hiring process. He also had suggested that if they wanted to handle the Executive Recruiter themselves, they could do that with Little sitting in on the interviews because of his expertise in major hiring.

Klein states that Commissioner Aldrich agreed with this approach, but Vaughn and Olson stated they did not want to use him. He said he explained the level of Little's expertise and the assistance that could be provided. He notes that Aldrich again agreed. He states that Aldrich then asked directly why not use Little. Neither Vaughn nor Olson could articulate why they did not want to use him. Vaughn stated that she thought Little was too political. Klein states that he and Commissioner Aldrich repeatedly attempted to get Vaughn and Olson to articulate a logical reason why they did not want Little involved. He states that neither Vaughn nor Olson offered any other reason. Klein states that Andrade was also in the Executive Session, and they both speculated as they were leaving whether Vaughn and Olson excluded Little from the process because he was gay and they were concerned about national candidates observing a gay man being involved in the recruiting process.

Klein states that he cannot say with absolute certainty that their inability to articulate a rational explanation correlated to them not wanting to expose Little's sexual orientation to candidates. However, he believes their failure to be able to articulate any other reason than Little being "too

political” and their struggle to explain even what that meant, created doubt in his mind as to their actual motive for exclusion. Klein states that this was a watershed moment for him. He states he gave Vaughn and Olson 12 different perspectives as to why they would want to use Little as a resource. He notes that he felt their absolute rejection of Little was a horrible insult to Little.

Klein also states that the Monday after the initial Executive Session, Pat Buescher came to him and told him she was concerned that Vaughn and Olson were making decisions outside of Executive Session or open Commission meetings. She also told him that Vaughn and Olson wanted her to coordinate the recruitment effort. However, in the subsequent Executive Session when he tried to explain how Little could be a resource, Vaughn asked Buescher if she could deal with it, and Buescher replied affirmatively. Days after the meeting, Buescher was nonetheless requesting Little’s assistance because Buescher did not know what she needed to do.

Branda Andrade also recalls the Executive Session wherein Vaughn stated that she did not want to use Little in the recruitment process. She confirms Vaughn giving the rationale that Little was too political and not being able to explain what that meant. She confirms Klein’s recollection of events. Andrade states that as she heard Vaughn’s explanation, she felt it was “code” for what Vaughn’s intentions were. She believes that Vaughn thought Little was too flamboyant. She states that she cannot say with certainty what Vaughn’s true intentions were at the time, but Andrade knows exactly what she thought Vaughn meant. After having spent more time with Vaughn, she now believes that politics are at least a part of her motivation.

Andrade states that Vaughn’s exact words were “absolutely not – I do not want that man involved in the process.” Andrade states that Vaughn clearly stated she did not want him involved at all. And, she states that Vaughn’s position did not change at all during the meeting. Andrade states that Vaughn appeared angry. She also states that Commissioner Aldrich challenged her, asking her why she was so adamant.

Andrade states that during this discussion, Olson stated that Little should not be involved in the interviews or selection process because of his direct reporting relationship to the General Manager. She believes that Olson would have retained her view irrespective of the person in the position. She observed that Vaughn got mad at Olson and stated that Olson wasn’t supporting Vaughn’s position “like they had had discussions about and consistent with their decision about keeping Jim

out of the process.” Andrade states that at this point, Klein and Aldrich had issue with both Vaughn’s position and her admission that Vaughn and Olson had been meeting outside of Board processes to discuss and decide issues relative to the recruitment process. Andrade also confirmed Buescher subsequently going to Little for help because she did not have the expertise needed to accomplish what had been assigned to her. Klein and Andrade confirm conversations with Little regarding the Executive Session. Klein initially spoke with Little briefly about the session. Shortly thereafter Little spoke with Andrade, and Klein later joined that discussion. Both intended to deliver the message about Little’s non-participation in the CEO Search while mitigating the other concerns they shared about conduct during the Executive Session.

Patricia Buescher had been with the PUD 29 years prior to her recent retirement. She stated that she did not know how recruitment was done in the past. She stated that Commissioner Olson and Commissioner Vaughn did not want Little involved in the interview process. She stated that they did not state why, and she did not ask why. She stated that when they directed her to deal with the recruitment process, she felt uncomfortable because it was not her expertise. She noted that both she and Klein thought that Little would be a good resource. As a result, she states that she called Little to get assistance. She notes that Little provided the assistance she requested (largely working with the recruiter, assisting with job description and working on logistics). Little provided a draft plan to Buescher, who passed it on to the Commissioners. She noted that this was the pre-interview period, but the Commissioners did not want Little involved even at that point of the process.

She was at the Executive Committee meeting where Klein was promoting Little’s use as a resource. She does not recall if anyone said Little was too political. She states that her impression was Little was inserting himself into the logistical meetings and that the Board objected to this. She feels sure in speaking with Olson that this is what she was told by Olson.

### **Factual Findings and Conclusions**

I find that Jim Little was excluded from performing functions related to the recruitment of the General Manager. Based on the evidence available to me, I conclude that Commissioner Vaughn was the principal actor in reaching this decision. However, I believe that Commissioner Olson also sought to exclude Little from participation, at least in the interview and selection portions of the process. I also find that Vaughn and Olson engaged in discussions and made decisions about



the General Manager's recruitment process outside of the Commission meetings in violation of the Open Public Meetings Act.

The decision to exclude Little from participation in the recruitment process is not in itself a violation of any law or policy of the Utility. While some might think it ill advised to exclude Employee Resources in the process, I agree with Vaughn that the Commissioners can decide to engage in the legal process of their choice to effect recruitment and replacement of the PUD's General Manager. This decision can be made by the Commissioners regardless of the skill and expertise of the Employee Resources Director.

However, this broad discretion to make such a decision and to put a recruitment process in place is limited by both law and PUD policies prohibiting discriminatory conduct on the basis of sexual orientation, and by the provisions of the Washington State Open Meetings Act. Based on my review of the evidence, I believe on a more probable than not basis, a reasonable trier of fact could conclude that individual Commissioners ran afoul of those limitations in the subject recruitment process.

Commissioners Vaughn and Olson's contention that all discussions and decisions regarding the recruitment process were made in Executive Session or open meetings is not credible. As reported by Andrade, Vaughn's statements during the Executive Session contradict this assertion. I believe that a trier of fact could find that in an unscripted moment during the Executive Session which occurred on or about February 9, 2015, Vaughn admitted that discussions and decisions were made by her and Olson outside of Commission meetings. These discussions and decisions did not include Commissioner Aldrich.

Specifically, Andrade stated that during the discussion of whether to exclude Little from the recruitment process the following occurred:

"What Toni [Olson] expressed was that she didn't believe he [Little] should be involved in the interview or selection process because no one [employee] in the District, and no direct report should be involved in that process. Dave [Aldrich] and Steve [Klein] went to Jim's [Little] defense. Kathy [Vaughn] got mad that Toni wasn't supporting her like they had agreed. This was a clear indication that they both had had discussions and made a decision

about keeping Jim out of the process. At this point Steve and Dave had issues with not only Kathy's position, but with the fact they had met, discussed and made decisions about this."

I credit the recollection of Andrade on this issue. Moreover, Klein confirmed to me that Andrade's recollection of the conversation was accurate. And, this rendition of events is also consistent with what Little reports was relayed to him by Klein and Andrade immediately after the Executive Session. Finally, while Aldrich did not confirm the specific admission noted above, he did admit that Klein raised "concerns about the other commissioners" with respect to various matters associated with the discussion of the recruitment process.

The Open Public Meetings Act in Washington (RCW 42.30) applies to the Snohomish PUD Board of Commissioners:

The Act requires that meetings of "the governing body of a public agency" be open to the public. This covers multi-member bodies that govern state and local government agencies and at the local level, it applies to groups like boards of county commissioners, city councils, school boards, **public utility district boards**, planning commissions, civil service commissions, and boards of adjustment. Under Washington law, a "meeting" takes place whenever a majority of a governing body's members congregate to deal in any way with their official business. This includes simply discussing some matter having to do with official business, taking public testimony, engaging in deliberations, reviews, or evaluations, and taking collective action on a motion, proposal, resolution, order, or ordinance. A "meeting" would not include purely social and ceremonial gatherings, nor would it likely apply to an academic conference or similar event that a majority of members happened to attend. The Act can apply to email and/or telephonic communications between a majority of the members of a governing body depending on the circumstances. [Citation omitted]

While the Commissioners could have, and did in many respects, reach consensus in open and/or Executive Session on a variety of issues associated with the recruitment process, it appears evident that a majority of the Commissioners (i.e., Vaughn and Olson) met outside of open or Executive Session and made decisions about that process.

With respect to the actual decision relating to Little's participation in the recruitment process, Vaughn denied that she ever wanted to exclude Little. She indicated that she only wanted to limit his participation to those of an ER resource. Olson indicated that she only wanted to exclude Little from the interview and actual selection process because as a direct report she felt that these

processes were inappropriate for his participation. Both deny making any decision based on concerns with Little's sexual orientation.

While I credit Olson's statements as to her articulated reasoning for limiting Little's involvement as explained above, I do not credit Vaughn's statements on this issue. Vaughn's statements to me were specifically contradicted by Klein, Andrade, Aldrich and Buescher in a number of respects. For example, in my interview with Vaughn she initially denied that she announced in Executive Session that she wanted to exclude Little because "he was too political." She at first stated that not she, but Olson made the statement. Only after further questioning on these issues did she "remember" that she was really the person who made the statement. In fact, both Andrade and Klein specifically recalled her making the statement, but really failing to explain what the statement meant.

Vaughn's contention that the Clerk had always run and managed the process is also suspect in light of Buescher's statement to me that she really did not have the expertise in various areas and sought out Little's assistance. Finally, contrary to Vaughn's statement to me that it was not her intent to exclude Little but only to limit his participation in the process to resource functions, Vaughn was heard to say by those in attendance at the February 9 Executive Session that she did not want Little involved in the process in any way. The evidence suggests that only after being challenged on her position to totally exclude Little did it appear that agreement was reached to authorize him to perform limited functions in the process.

More importantly, Vaughn's reported irrationality, vehemence and anger at the possibility of Little's participation in the GM recruitment was so significant that both Klein and Andrade formed the strong opinion that Vaughn's real concern was about Little's sexual orientation and the participation of a gay man in the recruitment process. Both Klein and Andrade shared this opinion with Little immediately after the Executive Session. However, both acknowledged that they could not categorically say that this was Vaughn's motivation.

There is no direct evidence of Vaughn's discriminatory motive. Unlike the open meetings issue, there is no admission by Vaughn of her motivation to exclude that I can rely upon in reaching my conclusion on this issue. However, in light of the credible circumstantial evidence available to me from Klein, Andrade and Buescher, I do conclude that there is sufficient evidence for a trier of fact

to find that Vaughn's motivation in excluding Little from participation in the GM recruitment process was in part due to his sexual orientation. Consideration of such issues in the employment context is contrary to Washington Law Against Discrimination (RCW 49.60) and Snohomish County PUD's own Policy against discrimination (Snohomish PUD Directives 12 and 10).

C. Discriminatory Treatment of Michael Owens re: Executive Session

Little contends that his husband, Michael Owens was summarily dismissed from an Executive Session by Commissioner Vaughn because of his sexual orientation. He contends that shortly after the whistleblower complaint report had been issued, the Board had an Executive Session that commenced after its regular open meeting. Little states that as part of Owens' duties as Executive Liaison, he attends most Executive Sessions. Owens states specifically that except for executive sessions dealing with the performance of a public official, he attends all executive sessions.

Owens states that after the open session and immediately prior to entering into executive session, he overheard Vaughn talking with Olson and he heard his name mentioned. Thereafter, when the Executive Session began, Owens states that Vaughn looked around the room, stated she was looking to see if all the right people were in attendance, and then abruptly asked Owens to excuse himself from the session. Owens states that Vaughn gave him no explanation. Little and Owens believe that this decision to exclude Owens from the Executive Session was based on his sexual orientation, race or disability status.

Relevant Witness Observation and information

All of the witnesses interviewed about this incident confirm Owens was normally a part of Executive Sessions consistent with his duties as Executive Liaison. They also confirm the abrupt exclusion of Owens from the subject Executive Session by Commissioner Vaughn.

Vaughn states that when gathering for the executive session she noticed one of the PUD's outside attorneys who dealt with employment and Employee Resources matters in the audience clearly preparing to present to the Board. At that point she was unaware that the attorney had been scheduled on the agenda and wasn't completely sure why she was there, but suspected it was because of issues that had arisen at the previous Board meeting with respect to the whistleblower complaint and individual commission members desire to respond to the complaint. She quickly

spoke with Olson about this (and believes that is what Owens must have heard) and decided that it would not be appropriate for Owens to be in the room for the discussion.

Andrade confirms Vaughn's assertions. She acknowledges that she had arranged for the outside attorney to come to the executive session to provide specific training on what the Commissioners could and could not do with respect to responding to the whistleblower and the various inaccurate statements that person was making in the press. She also acknowledged that she neglected to provide this information to either Anne Spangler who was in the Acting General Manager position at the time or Commissioner Vaughn. Andrade states that it was this breakdown in communication that resulted in Commissioner Vaughn being confused, and taking the precautionary step of excluding individuals from the Executive Session who she felt were not necessarily needed for this discussion. She indicates that after the Executive Session she explained the communication issue to Owens and confirmed it was her failure and not the Commissioner's failure that led to his exclusion. Spangler confirms Andrade's recollection of the event.

### **Factual Finding and Conclusions**

There is little dispute that Owens was more or less summarily dismissed from the Executive Session in question, without warning and without explanation at the time; although he did receive a later explanation from Andrade. It is also clear that as a matter of practice, consistent with his job duties as Executive Liaison, Owens would normally be included in such a session. Notwithstanding these facts, the evidence suggests and I find that the act of excluding him from this session had nothing to do with his race, sexual orientation or disability status. This action resulted from a miscommunication between the legal department, the Acting General Manager and the Commissioners, and a determination during the resultant confusion that Owens was not needed for the discussion. I therefore find no merit to this allegation.

#### **D. Elimination of Owens' Executive Liaison Position**

Owens and Little indicate that Commissioner Vaughn and Olson conspired to have Owens removed from the Executive Liaison position that he held at the Utility. Owens contends that over a period of time, Commissioner Vaughn treated him poorly. He felt that she thought he was too assertive. He believes that notwithstanding his early personal friendship with Commissioner

Olson, she developed a dislike for him as a result of medical issues that he was having with his back. Little and Owens believe that the Commissioners discussed methods and ways that they could move Owens out of the Executive Liaison position.

Little and Owens also believe that General Manager Klein felt Vaughn and Olson were out to get Owens. Klein had expressly told them that the Commissioners did not like Owens for some reason. He could not articulate why Commissioner Olson did not like Owens. He believed Vaughn did not like Owens because of his sexual orientation. When Klein gave his notice of retirement, Little and Owens believe that Commissioners Vaughn and Olson made it a condition of hiring CEO/GM Collar, that Collar eliminate the position of Executive Liaison. Owens contends that thereafter Collar advised him that he was considering elimination of the position. Ultimately Collar informed him that the position was going to be eliminated and the duties of the position would be handled by Collar or others in his organization.

Owens states that he was also being recruited by Jim West for a position in his division. Owens noted that he continued to talk with West while Collar was deciding whether he was going to eliminate the Executive Liaison position. When Collar did eliminate the Executive Liaison position, Little took the position with Jim West. Little and Owens believe that this whole series of events were all on the basis of his sexual orientation, race and/or disability status.

Commissioners Vaughn and Olson deny that they had anything to do with General Manager Collar's decision to eliminate the Executive Liaison position. To the extent there was friction between Owens and the Commissioners, that friction was the result of issues that existed with respect to Owens' performance in his role as Executive Liaison and his interaction with the Clerk of the Board and her office. The Commissioners note that they did not supervise Owens and, although they discussed their concerns about Mr. Owens with Klein, they left it to Klein to deal with those issues. Vaughn and Olson specifically deny that they discriminated in any way against Owens. They also deny conspiring to have his position eliminated. They specifically deny directing Collar to eliminate the position of Executive Liaison.

Relevant Witness Observation and Information

General Manager Collar emphatically denies that he was instructed to eliminate the Executive Liaison position. Collar acknowledges that he was told by the Commissioners that he had the ability to make whatever changes in organizational structure he felt were appropriate to the organization. However, he denies that he was directed to make particular changes to the Executive Liaison position in connection with his appointment. Moreover, he denies that the Commissioners even made a suggestion concerning that issue.

Collar states that in evaluating his role and how he wished to see the office of the CEO/General Manager operate, he felt that the need for the Executive Liaison position was not evident or necessary. Further, he understood that there were other needs in the public utility district in which Owens would be useful. Collar states that he had spoken to Jim West regarding West's strong desire to have Owens join his department. He felt that his decision to eliminate the Executive Liaison position was consistent with his desires for the CEO/GM office and incidentally benefited West's department.

Commissioner Olson states that she had a good working relationship with Mr. Owens. In fact, she states that Owens was her campaign manager in the past. She states that she had no reason to discriminate against Owens on the basis of sexual orientation, race or any other reason. She and Owens had worked together over a number of years on a variety of topics and she considered Owens a friend.

She denies conspiring with Commissioner Vaughn or anyone else to have Owens removed from the Executive Liaison position. She acknowledges that over a more recent period of time, she and Owens were not communicating as effectively as they could. She talked with Klein about these issues. She also attempted to talk with Owens about these issues. However, neither discussions resulted in any affirmative action on her part to compel either Klein or Collar to eliminate Owens' position as Executive Liaison.

Commissioner Vaughn states that over the years she felt that Owens had a difficult relationship with the personnel in the Clerk's office. She felt that as a result of this relationship, the Commissioners were not getting information in a timely manner. Because information was not

being provided to the Clerk's office in a timely way, it created difficulties for the Clerk and the Board. She and Olson did discuss those issues. However, they both recognized that issues of performance were for Klein to handle.

Commissioner Vaughn also denies putting any conditions on Collar with respect to the disposition of the Executive Liaison position. She confirms Collar's statement that she told him that it was his decision to manage and organize the General Managers office as he saw fit. She specifically denies conspiring to eliminate Owens' position with anyone, including Commissioner Olson.

Commissioner Aldridge confirms that Commissioners Olson and Vaughn were having difficulty with Owens in the Executive Liaison position. His sense was that they wished that he were not in the position. However, he has no information regarding Vaughn and Olson conspiring to have the position eliminated.

Jessica Matlock states that while she was in Washington, DC with Commissioners Vaughn and Olson that Vaughn and Olson did have conversations with her regarding Owens and his tension with the Clerk's office. She cannot recall much detail regarding these conversations. And, she cannot confirm that Vaughn and Olson were conspiring to get Owens removed from the position.

Klein states that over a period of time Commissioner Olson began having serious difficulties with Owens. He states that he talked with Owens regarding his relationship with Commissioner Olson and how Owens could improve the relationship. He attempted to understand and mediate the issues that were involved between them.

Klein has a different recollection of what allegedly occurred in Washington, DC. Klein became particularly upset when Jessica Matlock returned from Washington, DC with information concerning discussions that Commissioners Olson and Vaughn were having. During these discussions, Matlock reported that Vaughn stated to Olson that if Olson needed assistance in getting Owens out of the Executive Liaison position, Vaughn could provide that assistance. Matlock also told Klein that Olson and Vaughn made various negative comments about Owens and his work in the position. Klein felt it was very inappropriate for the Commissioners to be discussing his Executive Liaison in that fashion with another Utility district manager.



## **Factual Findings and Conclusions**

It is clear to the investigator that both Commissioners Vaughn and Olson had difficulties with Owens and his performance of Executive Liaison duties. These difficulties largely stemmed from Owens' interaction with the Board Clerk and the Clerk's office. The Clerk, as a direct report to the Commissioners, provides Board packets to the Commissioners and acts as the liaison between the Board and Utility management in certain respects. In order for the Board to operate effectively, it must receive timely and relevant information from Utility management. The Executive Liaison worked closely with the Clerk's office to provide this information. And, it is clear that over a period of time there were a number of disagreements (or breakdowns) between the Executive Liaison and the Clerk's office relative to this information.

Both the Clerk and the Deputy Clerk confirm these difficulties. They both confirm that these issues had been discussed with the Board, and that they had attempted to discuss these issues with Owens. They believed that the discussions were often not productive. Klein confirms that the difficulties seemed to increase over time. And, he notes his concern that the Commissioners were expressing greater frustration concerning Owens.

Complicating the situation above, there is evidence that notwithstanding their assertions to the contrary, Olson and Vaughn discussed Owens and his perceived shortfalls with Jessica Matlock in a conference that the three attended in Washington, D.C. When questioned on the subject, Matlock seemed to have memory loss concerning the specifics of that discussion. However, Klein's recollection was very clear as to what Matlock reported to him at the time. I credit his recollection that Matlock told him Vaughn assured Olson she would help Olson if there was a need to have Owens removed from the Executive Liaison position.

Another complicating matter arose as a result of communications that were discovered between Vaughn and Spangler (while Spangler was Acting General Manager) immediately after Collar was advised that he was selected for the CEO/General Manager position. In that communication, Vaughn requested a copy of Owens' job description and salary history from Spangler. Spangler declined to provide this information to Vaughn as she felt Vaughn really had no need for it at that time. Vaughn's explanation for the request was that she "was just curious and [she] wanted to know if they [Collar] was just going to give him [Owens] another position and a tap out. [She]

was just wondering how this was going to change.” Notwithstanding the request, and the very questionable explanation Vaughn provided, there is no evidence that Vaughn received the information requested or acted on it in any way.

As a result of the information presented to me, I find there to be sufficient evidence to support the claim that Commissioners Vaughn and Olson preferred that Owens not continue in the Executive Liaison position. I also find sufficient evidence to support the conclusion that one or both of the Commissioners had various discussions with at least Aldrich and Matlock about Owens’ performance in the Executive Liaison position.

However, notwithstanding those findings, I do not believe there is a sufficient evidence to conclude that Collar was expressly told that he must eliminate the Executive Liaison position as alleged by Little and Owens. I’ve reached this conclusion based on the lack of direct evidence that Vaughn and Olson actually took any direct action consistent with the allegation. More importantly, I credit Collar’s statement that the decision to eliminate the position was based upon his independent review of the functions that he wanted as the new CEO/General Manager of the PUD. I believe that Collar was fully aware of West’s interest in Owens. I also believe he was fully aware of the tension that did exist between Owens, the Clerk’s office, and the Board of Commissioners. In my view, all of those matters went into his calculations and conclusions as he was deciding how he was going to organize his staff.

Even if I were to conclude that Vaughn and Olson did have a hand in convincing Collar to eliminate the Executive Liaison position, there is no evidence that their motivation had anything to do with Owens’ sexual orientation, race or asserted disability. In fact, there is overwhelming evidence that Owens had issues with the personnel in the Clerk’s office and as a result, issues with the Board. Those issues, regardless of cause, resulted in the increase in tension that existed between the Commissioners and Owens. Consequently, I find there to be insufficient evidence to sustain the allegation raised.

#### E. Violations of Open Public Meetings Act

Little alleges that Vaughn and Olson violated the Washington Open Public Meetings Act by meeting and making decisions outside of the formal Commission meeting setting. Specifically,

and in addition to the matters discussed in section V.B. above, he contends that various individuals observed Vaughn and Olson meeting in a conference room and discussing matters outside of the Commission Meeting process. He also asserts that a telephone call he received from an external GM candidate suggested that Vaughn was acting without the authority of the Commissioners. Finally, he contends that other comments and positions taken by Vaughn suggest that she was violating the provisions of the Act.

Vaughn and Olson again deny that they were meeting outside of the Board process. To the extent that Vaughn was contacting the recruiting consultant, she contends that the consensus of the Board was that she do so, and that in any event, her contact with Lanie Prouse was preliminary to Prouse meeting with the Commissioners to explain how she would proceed with the process.

#### Relevant Witness Observation and Information

With respect to the various allegations, the most significant is that Olson and Vaughn were observed meeting and discussing Commission issues in a meeting room at the PUD. Various individuals observed the two individuals meeting. The Commissioners don't specifically recall the situation, but contend that they have not had secret meetings at the PUD wherein they discussed and made decisions on District business. While each of the witnesses that I spoke with regarding the meeting in question confirmed that a meeting occurred, none of them could provide any information about the topic of the discussion. Additionally, both Vaughn and Olson deny that they met to discuss District business on this occasion.

In relation to the various episodic contacts raised in the allegation, including Vaughn's initial contact with the recruiters, Commissioners Aldrich and Owens were in agreement that the Commissioners had decided as a group, consistent with Vaughn's contention, that Vaughn would be making contacts (particularly with respect to the outside consultant), and understood that Vaughn would be point on getting the recruitment process started.

While Little contends that his contact with a prospective GM candidate also suggests inappropriate extra-Commissions contact, the only people involved in that conversation were Vaughn and the individual candidate. While the candidate believed that the Commissioner may have been going

further than the Commissioner was authorized to go, the Commissioner denies that she was exceeding the understanding that she felt all of the Commissioners agreed upon.

### **Factual Findings and Conclusions**

Although I did find in section V.B. of this report that Commissioners Vaughn and Olson violated the Open Public Meetings Act in certain meetings that they had with respect to the recruitment process and the exclusion of Little from that process, I based that conclusion on Commissioner Vaughn's admission (as reported by Klein and Andrade) that she did have those meetings. With respect to the instant allegation, there is no such admission. On the contrary there appears to be support from the other Commissioners that as a body the Commissioners understood and supported the initial contacts made by Vaughn to begin the recruitment process. Moreover, with respect to the PUD meeting, Vaughn and Olson deny that they met to discuss and make decisions on Commission business; and, no witness to that meeting can provide detail on what was discussed by the Commissioners on that occasion.

I do not find there is sufficient evidence to conclude further violations of the Open Public Meetings Act occurred within the context of the allegations made.

#### **F. Violations of Ethical Standards Re: Employment of Policy Analyst**

Little contends that Commissioner Vaughn employs Nancy Holbrook as a Policy Analyst; however, she does not require Holbrook to actually perform any work. He contends that Holbrook does not come into the office, generally does not communicate with other PUD employees, and otherwise does not perform any other functions consistent with actual employment with the Public Utility District. Consequently, Little contends that Vaughn's employment and payment of Holbrook for not doing any actual work is an ethical violation.

Vaughn denies that either she or Holbrook is violating the law. Vaughn contends that Holbrook is employed under contract to work as her policy analyst. Vaughn states that she and Holbrook have developed a working pattern and process over the years that compliments her needs and also works well with certain medical limitations and conditions that affect Holbrook. Vaughn notes that Holbrook gives her extensive support on a variety of issues that implicate the considerations

and decisions that she has to make as a Commissioner of the District. Vaughn believes that Holbrook performs consistent with her obligations as the District's employee.

Relevant Witness Observation and Information

Commissioner Vaughn states that Holbrook was hired out of a public recruitment process, from a competitive field of 158 applications. She states the process was administered by the Employee Resources department. Vaughn states that Holbrook's office used to be at the PUD building, but eventually an accommodation was made for Holbrook in light of a variety of health problems that she was experiencing. Vaughn states that Holbrook was advised by her doctor to move out of Snohomish County, and she subsequently did so and established a small home office from which she performs her work. Vaughn contends that she communicates frequently with Holbrook on the many issues that she assigns Holbrook to research for her. Moreover, Vaughn states that Holbrook attends Executive Sessions when they are applicable to work she is doing, by calling into the sessions, listening on the line and commenting when called upon.

Vaughn additionally notes that Holbrook does research for her. The research relates to information that is contained in the Commissioner packets relative to issues before the Commission. Holbrook also works on other issues, researching community concerns relative to Commission work. Vaughn states that Holbrook's former work with the Northwest Energy Coalition was invaluable to her. Vaughn states that she uses Holbrook as a resource for advance work on projects and problems that might be on the horizon.

Vaughn acknowledges that her work with Holbrook is not an 8 to 5 job. She asserts that she works with Holbrook frequently in the evening and on the weekends. She states that they have extensive phone conversations about issues. She also contends that most of the work that Vaughn produces is in the form of oral reports. She adds that a small part is in writing, but she does not necessarily keep this work product after the need is completed. Ultimately, Vaughn contends that Holbrook provides a service to her that she feels is valuable, and works under conditions that she feels are acceptable and convenient for Vaughn.

Holbrook states that she was originally hired to work for Commissioner Vaughn as a Commissioner Assistant on April 9, 1999. She was hired as an at-will employee analyst. She

was instructed to get multiple views of issues from outside sources that Vaughn could use in her decision-making process. She states that she was hired due to her experience with environmental groups and social service agencies. She states that during this term of her employment she was told that since she worked with a specific commissioner she really should not be communicating with PUD staff.

Holbrook notes that from very early on she was telecommuting. She confirms that Vaughn agreed that this was okay, although she was not very happy about it. She states that she ended her first term of employment with Vaughn on Sept 7, 2001. However, on January 8, 2003, she was rehired specifically as an analyst working for Commissioner Vaughn. She continued to telecommute part-time, and the rest of the time had an office at the PUD Administrative Offices.

Holbrook states that during this time, and currently she has been diagnosed with a number of allergies and chemical sensitivities that required her to stay away from enclosed buildings. She states these conditions were fully disclosed to the Commissioner before she was hired. She states no formal ADA evaluation was done at that point because the Commissioners were good about personally accommodating her conditions when necessary and her asthma was better controlled. There was never any official paperwork filled out with respect to these conditions or her accommodation. Later in her employment, Holbrook states that she began getting migraines which were exacerbated by fluorescent lighting and which also affected her asthma.

After Klein came on board he reorganized the office. Vaughn told her that Klein indicated that he did not believe that Holbrook should be interacting with staff by phone or in person. Although she expressed to Vaughn her potential vulnerability with this arrangement, Vaughn and Holbrook agreed that she would be allowed to call in to perform her work. The PUD would provide her a lap top, phone line and fax in order to accommodate her situation. She was allowed to attend meetings by computer feed and call in to all Executive Sessions. At that point, she states that she was telecommuting full time. And, shortly thereafter she states she was diagnosed with degenerative collapsed disc disease which made it difficult for her to sit for a long period.

Holbrook states that she is a salaried employee, and because of the nature of Vaughn's work many of her interactions with Vaughn occur in the evenings and on weekends. Holbrook describes her typical week as each day reviewing Commissioner email or other materials, reading up on various

subjects assigned by Vaughn, doing research requested by Vaughn, collecting information from sources outside of the PUD relative to matters on which Vaughn might need to consider for policy decisions. She states that she and Vaughn spend a lot of time working on renewable energy issues.

Holbrook states that Vaughn likes to get her information orally and discuss issues with her. She states that with respect to her work, most people call her. She notes that her phone does not reflect many outgoing calls. Further, she sometimes calls Vaughn on her 800 number which is not reflected on her records. Finally, she states that most of her work product, to the extent it is in paper, would be maintained at Vaughn's office. She does not know what Vaughn keeps or decides to discard. Neither Vaughn or anyone else has told her to keep copies of the materials she provides or her work product, and over the years ( and particularly after her mother died) she has thrown away a lot of her files. She was told by Vaughn that she had no obligation to keep them.

All other persons interviewed concerning this issue have limited knowledge of what Holbrook does. Most have not seen her in years. Those that have seen her have only seen her less than a handful of times. Most have not talked to her ever. Those that have talked to her have only done so one or two times. Those that were in a position to know confirm that she sometimes does call in to Executive Sessions, and the Clerk's office confirms that she does receive Board packages, but they too have little actual working interaction with her. Steve Klein denies telling Vaughn or Holbrook that Holbrook should not come into the office, although he does acknowledge that it felt that she was a disruptive force when she did come in. Klein indicated that she was the District's employee and he had no responsibility for her or her work product.

PUD material relating to Holbrook is limited. While her employment file does have yearly evaluations that were written by Vaughn on Holbrook, there is some, but not a lot of written work product available or that has been provided to me by Vaughn, Holbrook or the PUD. Copies of documents provided to Little in response to public disclosure requests concerning Vaughn show very little in terms of work product; however, I note that this would be consistent with the pattern of work that both Vaughn and Holbrook indicated existed. There is no policy that I could locate that required Holbrook to keep documentation of work product, or that required Vaughn to insist on the same.

## **Factual Findings and Conclusion**

While I am concerned about the nature of a work relationship that is epitomized by a lack of documents, a lack of evidence of work product, and a paucity of substantive proof of work obligations and regular execution of those obligations, I likewise have insufficient proof that what has been described did not, in fact, exist. I am left with the conclusion that the existence of the relationship as described is plausible, even if it is not consistent with best employment practices. Clearly, the Commissioners were well aware of the work relationship.

Holbrook's employment is supported by an employment contract that appears to have been negotiated and entered into in good faith by the PUD and Ms. Holbrook. Commissioner Vaughn contends that Holbrook's work is exactly what she needs to fulfill her obligations as a Commissioner. And, she confirms the very flexible nature of the work relationship. In fact, Vaughn endorses that relationship in light of the medical conditions that Holbrook reports. I am also concerned at the apparent lack of records of Holbrook's medical conditions or discussions relevant to the purported accommodations that were provided with respect to the conditions. But again, this is something that was known to the Commissioners and to the PUD, and it is understood that correction of this issue has only recently been addressed.

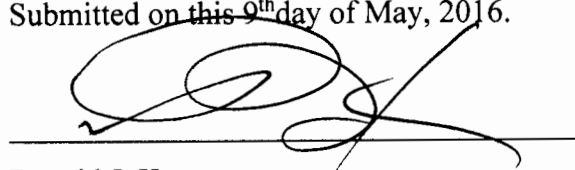
My concerns regarding the dearth of supporting and corroborating evidence related to Holbrook's employment cannot be substituted for actual evidence of subterfuge and attendant ethical violations. I find that I have insufficient evidence to draw such a conclusion.

## **VI. Conclusion**

Little has raised a number of issues of alleged discrimination, statutory and ethical violations. While I have found there to be evidence on a more probable than not basis of inappropriate conduct and motivations with respect to Little's exclusion from the General Manager recruitment process as more fully explained above, I do not find sufficient evidence to support the other allegations made by Little in his exit interview attendant to his retirement as Employee Resources Director.



Submitted on this 9<sup>th</sup> day of May, 2016.



Ronald J. Knox

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